



74 3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

Coates, et al.

Serial No.: 09/753,220

Filing Date: 12/29/00

For: DYNAMIC REPLICATION OF FILES IN
A NETWORK STORAGE SYSTEM

PATENT APPLICATION

Examiner:

<Unassigned>

**DECLARATION AND POWER OF ATTORNEY
FOR PATENT APPLICATION**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below, next to my name.

I believe I am an original, first, and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled DYNAMIC REPLICATION OF FILES IN A NETWORK STORAGE SYSTEM, the specification of which was filed on 12/29/00 as United States Application Number 09/753,220.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claim(s), as amended by any amendment referred to above. I do not know and do not believe that the claimed invention (1) was ever known or used in the United States of America before my invention thereof, (2) was patented or described in any printed publication in any country before my invention thereof or more than one year prior to this application, (3) was in public use or on sale in the United States of America more than one year prior to this application, or (4) was patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months (for a utility patent application) or six months (for a design patent application) prior to this application.

I acknowledge the duty to disclose all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56 (and reprinted in Appendix A).

Claim of Benefit to Provisional Application(s)

I hereby claim the benefit under title 35, United States Code, Section 119(e) of any United States provisional application(s) listed below:

<u>60/186,693</u>	<u>3/3/2000</u>
(Application Number)	(Filing Date)

<u>60/186,774</u>	<u>3/3/2000</u>
(Application Number)	(Filing Date)

Claim of Benefit to Prior Non-Provisional Application(s)

I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application:

09/695,499	10/23/2000	Pending
(Application Number)	(Filing Date)	(Status – patented, pending, abandoned)

Claim of Foreign Priority

I hereby claim foreign priority benefits under Title 35, United States Code, Section 119(a)-(d), of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

<u>Prior Foreign Application(s)</u>			<u>Priority Claimed</u>	
<u>(Number)</u>	<u>(Country)</u>	<u>(Day/Month/Year Filed)</u>	<u>Yes</u>	<u>No</u>

Power of Attorney


I hereby appoint the persons listed on Appendix B hereto (which is incorporated by reference and a part of this document) as my respective patent attorneys and patent agents, with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith.

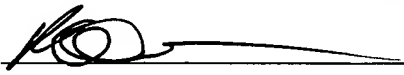
Send correspondence to:

John Stattler
STATTLER, JOHANSEN & ADELI LLP
P.O. Box 51860
Palo Alto, California 94303-0728

and direct telephone calls to
John Stattler, at (650) 934 0470, ext. 100.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of First Inventor Joshua L. Coates
Inventor's Signature  Date 2/26/01
Residence Orinda, CA Citizenship USA
Post Office Address 70 Brookwood Road, Orinda, CA 94563

Full Name of Second Inventor Patrick E. Bozeman
Inventor's Signature  Date 2/26/01
Residence San Francisco, CA Citizenship USA
Post Office Address 500 Beale Street, #311, San Francisco, CA 94105

APPENDIX A

Title 37, Code of Federal Regulations, Section 1.56
Duty to Disclose Information Material to Patentability

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) Prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

APPENDIX B

Mani Adeli, Reg. No. 39,585; Dag H. Johansen, Reg. No. 36,172; John Stattler, Reg. No. 36,285, Anand Sethuraman, Reg. No. 43,351; my patent attorneys, of STATTLER, JOHANSEN & ADELI LLP, with offices located at 2672 Bayshore Parkway - Suite 304, Mountain View, California 94043, telephone (650) 934-0470, fax (650) 934-0475.